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**JONATHAN SPANGLER  
NU VASIVE, INC.  
4545 TOWNE CENTRE COURT  
SAN DIEGO CA 92121**

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**JAN 20 2006**

**OFFICE OF PETITIONS**

In re Application of :  
Hoey et al. :  
Application No. 10/812,038 :  
Filed: March 29, 2004 :  
Attorney Docket No. 059US2 :  
:

**ON PETITION**

This is a decision on the petition under 37 CFR 1.181, filed August 8, 2005, requesting the withdrawal of the holding of abandonment in the above-identified application. A petition under 37 CFR 1.137(b) has also been submitted, in the alternative.

The petition to withdraw the holding of abandonment is **GRANTED**.

The petition under 37 CFR 1.137(b) is **DISMISSED AS MOOT**.

The above-identified application was held abandoned for failure to timely reply to the non-final Office action mailed September 21, 2004, which set a shortened statutory period for reply of three (3) months. A reply was due on or before December 21, 2004. A Notice of Abandonment was mailed on May 4, 2005.

Petitioner states that the reply was in fact timely filed. To support this assertion, petitioner has submitted a copy of the return postcard, which acknowledges receipt by the U.S. Patent and Trademark Office (USPTO) on March 28, 2005 of 1. Transmittal Form; 2. Petition for Extension of Time; 3. Responsive Amendment; 4. Copy of Declaration from Patent Application; 5. Copy of Inventor Information Page from Parent Application; and 6. Return Postcard. Additionally, petitioner has supplied a copy of the previously mailed correspondence, which bears a certificate of mailing date of March 21, 2005.

A review of the application file confirms receipt of the reply submitted on March 28, 2005. However, the serial number was incorrectly listed as 10/812,938. Under current Office procedure, a response that has an incorrect application number is handled in accordance with MPEP 508.03. If a paper having an incorrect application number contains sufficient information to identify the correct application and was timely filed, the holding of abandonment will be withdrawn. In reviewing the papers submitted, it is concluded that the information contained thereon was sufficient to associate the papers with the instant file.

Petitioner is cautioned to ensure that the correct identifying data appears on all correspondence submitted to the USPTO to avoid situations of the nature which occurred in the present application.

In view of the above, the holding of abandonment is hereby withdrawn and the application restored to pending status.

A petition to withdraw the holding of abandonment under the provisions of 37 CFR 1.181 does not require a fee. Accordingly, the \$750.00 petition fee will be credited to petitioner's deposit account as authorized.

The Office sincerely apologizes for the inconvenience caused the petitioner in this matter.

This matter is being referred to Technology Center AU 3736 for further examination on the merits.

Telephone inquiries concerning this decision should be directed to Petitions Examiner Liana Chase at (571) 272-3206. All other inquiries should be directed to the Technology Center.

  
Frances Hicks  
Petitions Examiner  
Office of Petitions